

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH McGUIRE, On Behalf of Himself and
All Others Similarly Situated,

Plaintiffs,

v.

DENDREON CORPORATION, et al.,

Defendants.

CASE NO.: C07-800-MJP

Consolidated Class Action

**DECLARATION OF CLAIRE L.
DAVIS IN SUPPORT OF
DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT
IN *MCGUIRE V. DENDREON* AND
*MOUNTANOS V. DENDREON***

**Note on Motion Calendar:
July 30, 2010**

ORAL ARGUMENT REQUESTED

This document relates to:

All Actions.

WILLIAM MOUNTANOS, PETER
MOUNTANOS, JAMES RYE, and TYRONE
REMINGA,

Plaintiffs,

v.

DENDREON CORPORATION, a Delaware
Corporation, MITCHELL GOLD, and DAVID
URDAL,

Defendants.

CASE NO.: C09-426-MJP

1 I, Claire L. Davis, declare:

2 1. I am an attorney at the law firm of Wilson Sonsini Goodrich & Rosati, P.C. I
3 make this declaration in support of Defendants' Motion for Partial Summary Judgment in
4 *McGuire v. Dendreon* and *Mountanos v. Dendreon*, filed concurrently herewith. I am familiar
5 with the facts set forth herein and could and would testify thereto if necessary.

6 2. Attached hereto as Exhibit 1 is a true and correct copy of the March 29, 2007
7 conference call transcript (DNDN 006675 – 006694).

8 3. Attached hereto as Exhibit 2 are true and correct copies of excerpts from the
9 March 29, 2007 Cellular, Tissue and Gene Therapies Advisory Committee transcript (DNDN
10 005349 – DNDN 005353; DNDN 005432 – DNDN 005433; DNDN 005501 - DNDN 005513;
11 DNDN 005655 – DNDN 005671; DNDN 005691 – DNDN 005695; DNDN 005718 – DNDN
12 005722; DNDN 005734)

13 4. Attached hereto as Exhibit 3 are true and correct copies of excerpts from the
14 Summary Basis for Regulatory Action, dated April 29, 2010, publicly available at
15 <http://www.fda.gov/downloads/BiologicsBloodVaccines/CellularGeneTherapyProducts/Approve>
16 [dProducts/UCM213114.pdf](http://www.fda.gov/downloads/BiologicsBloodVaccines/CellularGeneTherapyProducts/Approve).

17 5. Attached hereto as Exhibit 4 are true and correct copies of excerpts from the Form
18 8-K, filed with the Securities and Exchange Commission ("SEC") on April 14, 2009.

19 6. Attached hereto as Exhibit 5 is a true and correct of the historical prices for
20 Dendreon Corporation from Yahoo! Finance for April 1, 2009 – April 30, 2009.

21 7. Attached hereto as Exhibit 6 are true and correct copies of excerpts from the Form
22 8-K, filed with the SEC on November 3, 2009.

23 8. Attached hereto as Exhibit 7 are true and correct copies of excerpts from the Form
24 8-K, filed with the SEC on April 29, 2010.

25 9. Attached hereto as Exhibit 8 are true and correct copies of excerpts from the
26 transcript of the deposition of David Urdal, dated May 10, 2010.

1 10. Attached hereto as Exhibit 9 are true and correct copies of excerpts from
2 Defendants' Amended Answers and Objections to Plaintiffs' First Set of Interrogatories, dated
3 April 26, 2010.

4 11. Attached hereto as Exhibit 10 is a true and correct copy of an email from Mitchell
5 Gold to David Urdal re Pai, dated February 12, 2007 (DNDN 000520).

6 12. Attached hereto as Exhibit 11 is a true and correct copy of an email from David
7 Urdal to Mitchell Gold re FDA Inspectors Arrival Notification, dated February 13, 2007
8 (DNDN 119336).

9 13. Attached hereto as Exhibit 12 is a true and correct copy of an email from James
10 Caggiano to David Urdal, dated February 16, 2007 (DNDN 000432).

11 14. Attached hereto as Exhibit 13 is a true and correct copy of an email from Greg
12 Schiffman re Post PAI Activities, dated February 27, 2007 (DNDN 000428 – DNDN 000430).

13 15. Attached hereto as Exhibit 14 is a true and correct copy of Mary Coon's
14 handwritten notes (DNDN 124499 – DNDN 124501).

15 16. Attached hereto as Exhibit 15 is a true and correct copy of an email from Nicole
16 Provost to Joanna Ward, dated February 17, 2007 (DNDN 008277).

17 17. Attached hereto as Exhibit 16 is a true and correct copy of an email from Mary
18 Coon to Michael Curry et al. re NJ Quality Communication Meeting, dated March 2, 2007
19 (DNDN 004698).

20 18. Attached hereto as Exhibit 17 is a true and correct copy of an email from
21 Elizabeth Smith to Michael Covington re NJ Pre-Licensing Inspection Response, dated February
22 20, 2007 (DNDN 002138).

23 19. Attached hereto as Exhibit 18 is a true and correct copy of an email from Chris
24 Gunnell to Mary Coon re Final Debrief Notes, dated February 16, 2007 (DNDN 004338).

25 20. Attached hereto as Exhibit 19 is a true and correct copy of a calendar request from
26 Greg Schiffman re Post PAI Activities, dated February 19, 2007 (DNDN 119355).

27

21. Attached hereto as Exhibit 20 are true and correct copies of excerpts from Debrief Notes – NJ PAI, dated February 12, 2007 (DNDN 004339, DNDN 004345).

22. Attached hereto as Exhibit 21 is a true and correct copy of an email from Mary Coon to Allan Wenzel et al. re Facility Changes for QC expansion, dated February 20, 2007 (DNDN 426899).

23. Attached hereto as Exhibit 22 is a true and correct copy of the Form 483, issued on February 16, 2007 (DNDN 139640 – DNDN 139643).

24. Attached hereto as Exhibit 23 is a true and correct copy of an email from David Urdal to Mitchell Gold, dated February 23, 2007 (DNDN 001276).

25. Attached hereto as Exhibit 24 is a true and correct copy of the FDA's meeting minutes, dated May 9, 2007, available electronically at

<http://www.fda.gov/biologicsbloodvaccines/cellulargenetherapyproducts/approved>

26. Attached hereto as Exhibit 25 is a true and correct copy of an email from Elizabeth Smith to Karen Krstulich re weekly Calls FDA, dated February 23, 2007 (DNDN 484620).

27. Attached hereto as Exhibit 26 is a true and correct copy of a letter from Elizabeth Smith to Mary Anne Malarkey, dated March 2, 2007 re Dendreon Corporation's initial responses to the Form 483 observations (DNDN 000388 – DNDN 000396).

28. Attached hereto as Exhibit 27 is a true and correct copy of an email from Mary Coon to David Urdal, dated February 27, 2007 (DNDN 000456).

29. Attached hereto as Exhibit 28 is a true and correct copy of a Powerpoint presentation re Provenge Pre-Licensing Inspection Response Development and Timeline, dated February 12 – 16, 2007 (DNDN 004241 – DNDN 004249)

30. Attached hereto as Exhibit 29 is a true and correct copy of Dendreon's March 23, 2007 Telecon meeting minutes with the FDA (DNDN 444025 – DNDN 444026).

31. Attached hereto as Exhibit 30 is a true and correct copy of Mary Coon's handwritten notes (DNDN 124521 – DNDN 124522).

1 32. Attached hereto as Exhibit 31 is a true and correct copy of an email from
2 Elizabeth Smith to Mark Frohlich re call agenda and dial in number, dated March 23, 2007
3 (DNDN 129011 – DNDN 129014).

4 33. Attached hereto as Exhibit 32 is a true and correct copy of the FDA's meeting
5 minutes with Dendreon, dated March 23, 2007, available electronically at
6 www.fda.gov/biologicsbloodvaccines/cellulargenetherapyproducts/approved.

7 34. Attached hereto as Exhibit 33 is a true and correct copy of an email from Karen
8 Krstulich to Connie Spooner re call agenda and dial in number, dated March 23, 2007 (DNDN
9 0088980).

10 35. Attached hereto as Exhibit 34 is a true and correct copy of the Board of the
11 Director's meeting minutes, dated March 2, 2007 (DNDN 529917.001 – DNDN 529918.001).

12 36. Attached hereto as Exhibit 35 is a true and correct copy of the Pfizer Phone Log ,
13 dated April 12, 2007 (DNDN 475378 – DNDN 475379).

14 37. Attached hereto as Exhibit 36 is a true and correct copy of the May 10, 2007
15 conference call transcript (DNDN 6872 – DNDN 6895).

16 38. Attached hereto as Exhibit 37 is a true and correct copy of the Dendreon script for
17 the May 10, 2007 conference call (DNDN 539956 – DNDN 539961).

18 39. Attached hereto as Exhibit 38 is a true and correct copy of the Complete
19 Response Letter, dated May 8, 2007 (DNDN 000159 – DNDN 000163).

20 40. Attached hereto as Exhibit 39 is a true and correct copy of the Form 8-K filed
21 with the SEC on May 9, 2007.

22 41. Attached hereto as Exhibit 40 is a true and correct copy of Dendreon's historical
23 stock prices, dated May 1, 2007, through May 31, 2007, publicly available online at Yahoo!
24 Finance.

25 42. Attached hereto as Exhibit 41 is a true and correct copy of FDA Q& A found
26 electronically at
27

1 [http://www.fda.gov/BiologicsBloodVaccines/CellularGeneTherapyProducts/ApprovedProducts/](http://www.fda.gov/BiologicsBloodVaccines/CellularGeneTherapyProducts/ApprovedProducts/ucm210037.htm)
2 [ucm210037.htm](http://www.fda.gov/BiologicsBloodVaccines/CellularGeneTherapyProducts/ApprovedProducts/ucm210037.htm).

3 43. Attached hereto as Exhibit 42 is a true and correct copy of the FDA
4 Memorandum re Teleconference 5/9/07 8:30 AM ET.

5 44. Attached hereto as Exhibit 43 is a true and correct copy of the Seattle Times
6 article re Dendreon shares plummet as FDA delays prostate cancer drug, dated May 9, 2007.

7 45. Attached hereto as Exhibit 44 is a true and correct copy of Wall Street Journal
8 news article, dated May 10, 2007, titled FDA Delays Approving Cancer Vaccine.

9 46. Attached hereto as Exhibit 45 is a true and correct copy of excerpts of the
10 deposition transcript of Richard Shupack, taken on June 11, 2010.

11 47. Attached hereto as Exhibit 46 is a true and correct copy of excerpts of the
12 deposition transcript of Elizabeth Smith, taken on May 20, 2010.

13 48. Attached hereto as Exhibit 47 is a true and correct copy of excerpts of the
14 deposition transcript of Andrew Scherer, dated May 4, 2010.

15 49. Attached hereto as Exhibit 48 is a true and correct copy of the FDA's April 4,
16 2007 teleconference meeting minutes with Dendreon, available electronically at
17 [http://www.fda.gov/BiologicsBloodVaccines/CellularGeneTherapyProducts/ApprovedProducts/](http://www.fda.gov/BiologicsBloodVaccines/CellularGeneTherapyProducts/ApprovedProducts/ucm213875.htm)
18 [ucm213875.htm](http://www.fda.gov/BiologicsBloodVaccines/CellularGeneTherapyProducts/ApprovedProducts/ucm213875.htm).

19 50. Attached hereto as Exhibit 49 is a true and correct copy of Dendreon's April 4,
20 2007 meeting minutes with the FDA (DNDN 001693 – DNDN 001696).

21 51. Attached hereto as Exhibit 50 is a true and correct copy of Dendreon's April 23,
22 2007 teleconference minutes with the FDA (DNDN 003029 – DNDN 003030).

23 52. Attached hereto as Exhibit 51 is a true and correct copy of excerpts of the
24 deposition transcript for Mitchell Gold, dated May 21, 2010.

25 53. Attached hereto as Exhibit 52 is a true and correct copy of excerpts of the
26 deposition transcript for James T. O'Reilly, dated June 9, 2010.

27

ATTESTATION

I, Barry M. Kaplan, am the ECF User whose identification and password are being used to file this DECLARATION OF CLAIRE L. DAVIS IN SUPPORT OF DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT IN *MCGUIRE V. DENDREON* AND *MOUNTANOS V. DENDREON*. I hereby attest that Claire L. Davis has concurred in this filing.

Dated: June 21, 2010

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: s/ Barry M. Kaplan
Barry M. Kaplan

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record who receive CM/ECF notification.

Dated: June 21, 2010

s/ Barry M. Kaplan
Barry M. Kaplan, WSBA#8661